

LELAND A. HODGES, TRUSTEE

IBLA 75-524

Decided December 23, 1975

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting in part noncompetitive oil and gas lease offer NM 22389 that embraces lands within the Carrizozo Lava Flow.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases: Stipulations--Rules of Practice: Appeals: Generally

On appeal from a decision rejecting an oil and gas lease offer insofar as it includes land within a lava flow under consideration for primitive or natural area status, when the Bureau of Land Management indicates that it is willing to lease some of the land under a no surface occupancy stipulation, and the offeror indicates he would accept such a stipulation for the land at issue, the decision will be set aside and the case remanded for consideration of issuance of a lease containing a no surface occupancy stipulation on the land in the lava flow.

APPEARANCES: Leland A. Hodges, Esq., Fort Worth, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Leland A. Hodges, Trustee, has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM),

rejecting in part his oil and gas lease offer for land in sec. 11, T. 6 S., R. 9 E., N.M.P.M., New Mexico. The offer was rejected insofar as it covered land in the Carrizozo Lava Flow, which the State Office had designated as an area "where no oil and gas leasing is allowed."

Appellant argues: 1) that the existence of the unleased block of land constituting the lava flow which might later be leased is a deterrent to exploration in the area; and 2) that the lava flow itself is extremely rugged and is not likely to be used for occupancy or drilling on the leasehold. Appellant indicates that he would be willing to accept a no surface occupancy stipulation on the portion of the offer in the lava flow.

In a memorandum from the Las Cruces District Manager to the State Director, New Mexico, dated August 6, 1975, which BLM submitted in response to a request by this office, the District Manager wrote that the final decision regarding natural or primitive area status for the Carrizozo Lava Flow would not be reached until late 1977, and that the BLM regarded as unacceptable any activity that might adversely affect future primitive area designation. The District Manager stated that lands up to 1 mile in from the edge of the lava flow could be leased with a no surface occupancy stipulation, as directional drilling would be a reasonable alternative to surface occupancy.

The District Manager expressed concern, however, that lands more than a mile in from the edge of the lava flow, which cannot be reached by directional drilling from outside the flow area, cannot be leased without allowing surface occupancy at some future date.

[1] The Secretary of the Interior and his delegates, under the discretionary authority granted by the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), are empowered to impose reasonable stipulations for the protection of surface resources and environmental and primitive area values in the issuance of public domain oil and gas leases. Richard P. Cullen, 18 IBLA 414 (1975); Bill J. Maddox, 17 IBLA 234 (1974); 43 CFR 3109.2-1. Although this Board will review protective stipulations to determine that they have legitimate protective goals and are reasonably formulated to achieve those ends, Earl R. Wilson, 21 IBLA 395 (1975); Bill J. Maddox, supra; George A. Breene, 13 IBLA 53 (1973), the Board has approved the use of no surface occupancy lease stipulations when justified by the circumstances. Duncan Miller, 16 IBLA 349 (1974); Nuclear Corp. of New Mexico, 14 IBLA 341 (1974).

In this case appellant appears to desire the lava flow area leased, not from a desire to occupy the surface of the flow, but rather to avoid the burden of future filings for these parcels if they are made available, and also to prevent subsequent applicants from benefiting from the results of appellant's exploration and development. Appellant's offer to accept a no surface occupancy stipulation for the lands in the lava flow may be adopted by the BLM in issuing the lease, and acceptance by the offeror would preclude subsequent objection to the restriction.

In addition, we note that in some circumstances a no surface occupancy clause may be acceptable even if a portion of the lease-hold cannot be reached by slant drilling. See Nuclear Corp. of New Mexico, supra. Although the factual record here is insufficient, it appears that the area in the lease offer that could not be reached by slant drilling may be minimal.

As the BLM has indicated that it is willing to lease some of the land for which the offer was rejected, see Rainbow Resources, Inc., 17 IBLA 142 (1974), and appellant has offered to accept a no surface occupancy stipulation for the area at issue, the decision rejecting the lease offer will be set aside and the case remanded for reconsideration in light of this decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for further consideration consistent with this opinion.

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Frederick Fishman  
Administrative Judge

We concur:

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Joseph W. Goss  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

